IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 194 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PASHUPALAK VIKAS SAHAKARI MANDALI LTD.

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

1. Appeal from Order No. 194 of 2000

MR JC VYAS for Petitioner No. 1

MR MK PUROHIT for MR PRASHANT G DESAI for Respdt. No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 21/09/2001

ORAL JUDGEMENT

1. Last time i.e. on 14.9.2001 when this matter was placed before me it was pointed out to Shri Vyas, learned Counsel for the appellant that in identical matters other appellants - plaintiffs have withdrawn the Appeal with

liberty to withdraw the Suit filed by them before the trial Court for filing the writ petition in this Court. Thereupon Shri Vyas requested to keep this matter today for taking necessary instruction from his client. Accordingly this matter was kept today.

2. Today Shri Vyas stated at the bar that he has not received any definite instruction from his client regarding withdrawal of this Appeal as well as the Suit,

3. This Court was not inclined to interfere with the impugned order dated 15.12.1999 passed by the learned Judge dismissing the Notice of Motion as this Court was of the considered opinion that instead of Suit, writ petition would be the proper remedy. Once Notice of Motion filed in the Suit is dismissed then it would be difficult for this Court to interfere with such discretionary order in Appeal.

4. In view of the above, this Appeal is dismissed. However, if the appellant - plaintiff, so advised, he can file writ petition after withdrawing the Suit from the trial Court. With this observation this Appeal from order is dismissed.

As the Appeal from order is dismissed, Civil Application No.3637 of 2000 will not survive. The same is accordingly dismissed.

sd/-

Date : September 21, 2001 (B.J.Shethna, J.)

sas